

Board of County Commissioners

Agenda Request

Date of Meeting: January 13, 2004
Date Submitted: January 7, 2004

To: Honorable Chairman and Members of the Board

From: Herbert W.A. Thiele, Esq.
County Attorney

Subject: Consideration of Proposed Policy Amendments Regarding Appraisal Process
for Flooded Property Acquisition Program

Statement of Issue

This agenda item requests the Board to consider proposed amendments to Policy No. 03-01, Approval Authority for the Acquisition, Disposition, and Leasing of Real Property, and to Policy No. 03-10, Flooded Property Acquisition Program, to establish an appraisal process to be used in determining the purchase price for acquisitions.

Background

Pursuant to the direction given by Commissioner Thael, with the concurrence of the Board, at the Board's December 9, 2003 meeting, this agenda item addresses the process by which staff determines the price to be used in purchase offers to property owners in the Board's Flooded Property Acquisition Program (the Flood Program). Staff is currently following the Board's direction given at its August 26, 2003 meeting at which it directed the County Attorney to authorize a scope of appraisal for properties purchased under the Flood Program to reflect a hypothetical condition as though the property does not flood. The County Attorney has subsequently expressed concern that, in certain situations, a hypothetical appraisal may result in a windfall to the property owner and may, therefore, bring the public purpose of the purchase into question. Based on this concern, the County Attorney was directed to review the process and propose a policy amendment addressing the appraisal process to be utilized for the Flood Program.

Analysis

In order to develop an appraisal procedure that is consistent with federal flood relief programs, County Attorney staff reviewed the various federal programs to determine how the purchase price of a property is determined. Although the federal programs, for the most part, provide little guidance for developing an appraisal process, a recent United States Congressional bill contains a sensible approach to determining the purchase price for a flooded property. House Bill H.R. 253, which passed in the U.S. House on November 20, 2003 and is currently being considered by the U.S. Senate, is known as the Flood Insurance Reform Act of 2003 (the Act).

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The Act proposes to amend the National Flood Insurance Act of 1968, and provides several flood mitigation options including the purchase of severe repetitive loss properties. The Act provides specific criteria to determine the amount of a purchase offer by requiring that the offer be not less than the greatest of the following:

- (A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;
- (B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property;
- (C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property; and
- (D) an amount equal to the replacement value of the property immediately before the most recent flood event affecting the property, except that this subparagraph shall apply in the case only of a property for which the State or community taking action under subsection (c)(2) [to purchase severe repetitive loss properties] determines, and the Director concurs, that the fair market value referred to in subparagraph (C) of the property is less than the purchase price of a replacement primary residence that is of comparable value, functionally equivalent, and located in the same community or market area but not in an area having special flood hazards.

According to Congressman Gene Green, the author of provision (D), this enables the property owner to purchase a comparable home outside the flood plain by offering replacement value if the fair market value is inadequate. The County Attorney suggests that these criteria could be revised and added to the Board's Policy No. 03-01, Approval Authority for the Acquisition, Disposition, and Leasing of Real Property, to provide direction to staff in determining the amount of purchase offers for acquisitions under the Flood Program, as follows:

The purchase offers shall be no less than the greatest of the following amounts:

- (A) the amount of the original purchase price of the property, when purchased by the owner of the property applying for such flood relief under this program;
- (B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property;

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(C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property; and

(D) an amount equal to the replacement value of the property immediately before the most recent flood event affecting the property, except that this subparagraph shall apply in the case only of a property for which the County Administrator determines, subject to approval by the Board, that the fair market value referred to in subparagraph (C) of the property is less than the purchase price of a replacement primary residence that is of comparable value, functionally equivalent, and located in the same community or market area but not in an area having special flood hazards.

Upon the Board's approval of this proposed appraisal procedure, the County Attorney will make amendments to Board Policies 03-01 and 03-10, as appropriate, and bring back the amended Policies to the Board for approval.

Options

1. Approve proposed appraisal procedure and direct County Attorney to make amendments to Board Policies 03-01 and 03-10, as appropriate, and bring back the amended Policies for Board approval.
2. Do not approve proposed appraisal procedure.
3. Board direction.

Recommendation

Option #1

HWAT/DJR/jm